

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN INGEBRETSEN,

Petitioner,

vs.

JACK PALMER, et al.,

Respondents.

Case No. 3:07-CV-00251-LRH-(RAM)

ORDER

Before the court are petitioner's motion for issuance of stay and abeyance (#89) and respondents' response (#91). To stay this action, petitioner must show that he has "good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." Rhines v. Weber, 544 U.S. 269, 278 (2005).

The court found that petitioner had not exhausted his available state-court remedies for grounds 1 through 4 of the second amended petition (#44). He had presented these claims to the state district court, but on appeal his post-conviction counsel simply tried to incorporate them by reference in his fast-track statement. This court determined that the Nevada Rules of Appellate procedure do not permit incorporation by reference, and thus petitioner used a procedurally incorrect method to try to present the claims to the Nevada Supreme Court. Under the unusual circumstances, the court finds that petitioner had good cause for his failure to exhaust, and the grounds have potential merit. The court will stay this action while petitioner returns to state court to exhaust these grounds.

1 IT IS THEREFORE ORDERED that petitioner's motion for issuance of stay and abeyance
2 (#89) is **GRANTED**.

3 IT IS FURTHER ORDERED that this action is **STAYED** pending exhaustion of the
4 unexhausted claims. Petitioner shall return to this court with a motion to reopen within sixty (60)
5 days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state court
6 proceedings. Further, petitioner or respondents otherwise may move to reopen the matter and seek
7 any relief appropriate under the circumstances.

8 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action
9 until such time as the court grants a motion to reopen the matter.

10 DATED this 15th day of January, 2010.



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14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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